



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 28, 1996

Mr. Richard Monroe
Deputy General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Bldg.
125 East 11th Street
Austin, Texas 78701-2483

OR96-0440

Dear Mr. Monroe:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 32180.

The Texas Department of Transportation (the "department") received a request for information concerning an accident that occurred on January 18, 1995, on U.S. Highway 67, east of Ballinger. The requestor seeks information from the department as to the road construction, road conditions, and correspondence "over the past two years" concerning the intersection at which the accident occurred. You assert that the requested information is directly related to the accident and that you have a reasonable expectation of being sued. You also assert that the requested information is excepted from disclosure pursuant to section 552.103(a) of the Government Code.

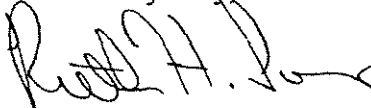
To secure the protection of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. Under Open Records Decision No. 638 (1996), a governmental body may establish that litigation is reasonably anticipated by showing that (1) it has received a claim letter from an allegedly injured party or his attorney and (2) stating that the letter complies with the notice of claim provisions of the TTCA or applicable municipal statute or ordinance. You have submitted to this office a letter from an insurance company stating that it is a notice of claim against the state, and that "there could be claims made for" personal injuries sustained by the driver and the passenger. Because your request for a decision from this office was made prior to the issuance of Open Records Decision No. 638

request for a decision from this office was made prior to the issuance of Open Records Decision No. 638 (1996), this office will assume that you are representing that the letter you received satisfies the requirements of the TTCA. We have reviewed the records, and our review shows that they are related to the anticipated litigation. Thus, the department has met its burden of showing that litigation is reasonably anticipated and the information at issue may be withheld pursuant to section 552.103(a).

We note that the applicability of section 552.103(a) ends if the other parties to the anticipated litigation obtain the information or when the litigation concludes. Attorney General Opinion MW-575 (1982) at 2; Open Records Decisions Nos. 350 (1982) at 3; 349 (1982) at 2. We also note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, Open Records Decision No. 542 (1990) at 4, the department could choose to release the information at this time. Gov't Code § 552.007.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/SAB/ch

Ref.: ID# 32180

Enclosures: Open Records Decision No 638 (1996)

cc: Mr. Greg Ash
Adjuster
Don Hendricks & Associates
P.O. Box 3368
San Angelo, Texas 76902
(w/enclosures-Open Records Decision No. 638 (1996))

¹We also note that if in the future you assert that section 552.103(a) is applicable on the basis of a notice of claim letter, you should affirmatively represent to this office that the letter complies with the requirements of the TTCA.